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COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 265

AS ENACTED

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SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adles

AN ACT relating to crimes and punishments and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
READ AS FOLLOWS:

(1) A person is guilty of trafficking in synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully traffics in synthetic cannabinoid agonists or piperazines.

(2) Trafficking in synthetic cannabinoid agonists or piperazines is a Class A Misdemeanor.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
READ AS FOLLOWS:

(1) A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.

(2) Possession of synthetic cannabinoid agonists or piperazines is a Class B misdemeanor.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
READ AS FOLLOWS:

(1) A person is guilty of synthetic cannabinoid agonists or piperazines manufacture when he or she knowingly manufactures synthetic cannabinoid agonists or piperazines.

(2) Synthetic cannabinoid agonists or piperazines manufacture is a Class A misdemeanor.

➔Section 4. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or

1 research subject by:

2 (a) A practitioner or by his authorized agent under his immediate supervision and
3 pursuant to his order; or

4 (b) The patient or research subject at the direction and in the presence of the
5 practitioner;

6 (2) "Anabolic steroid" means any drug or hormonal substance chemically and
7 pharmacologically related to testosterone that promotes muscle growth and includes
8 those substances listed in KRS 218A.090(5) but does not include estrogens,
9 progestins, and anticosteroids;

10 (3) "Cabinet" means the Cabinet for Health and Family Services;

11 (4) "Child" means any person under the age of majority as specified in KRS 2.015;

12 (5) "Controlled substance" means methamphetamine, or a drug, substance, or
13 immediate precursor in Schedules I through V and includes a controlled substance
14 analogue;

15 (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of
16 this subsection, means a substance:

17 1. The chemical structure of which is substantially similar to the structure
18 of a controlled substance in Schedule I or II; and

19 2. Which has a stimulant, depressant, or hallucinogenic effect on the
20 central nervous system that is substantially similar to or greater than the
21 stimulant, depressant, or hallucinogenic effect on the central nervous
22 system of a controlled substance in Schedule I or II; or

23 3. With respect to a particular person, which such person represents or
24 intends to have a stimulant, depressant, or hallucinogenic effect on the
25 central nervous system that is substantially similar to or greater than the
26 stimulant, depressant, or hallucinogenic effect on the central nervous
27 system of a controlled substance in Schedule I or II.

1 (b) Such term does not include:

- 2 1. Any substance for which there is an approved new drug application;
- 3 2. With respect to a particular person, any substance if an exemption is in
4 effect for investigational use for that person pursuant to federal law to
5 the extent conduct with respect to such substance is pursuant to such
6 exemption; or
- 7 3. Any substance to the extent not intended for human consumption before
8 the exemption described in subparagraph 2. of this paragraph takes
9 effect with respect to that substance;

10 (7) "Counterfeit substance" means a controlled substance which, or the container or
11 labeling of which, without authorization, bears the trademark, trade name, or other
12 identifying mark, imprint, number, or device, or any likeness thereof, of a
13 manufacturer, distributor, or dispenser other than the person who in fact
14 manufactured, distributed, or dispensed the substance;

15 (8) "Dispense" means to deliver a controlled substance to an ultimate user or research
16 subject by or pursuant to the lawful order of a practitioner, including the packaging,
17 labeling, or compounding necessary to prepare the substance for that delivery;

18 (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V
19 controlled substance to or for the use of an ultimate user;

20 (10) "Distribute" means to deliver other than by administering or dispensing a controlled
21 substance;

22 (11) "Drug" means:

23 (a) Substances recognized as drugs in the official United States Pharmacopoeia,
24 official Homeopathic Pharmacopoeia of the United States, or official National
25 Formulary, or any supplement to any of them;

26 (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or
27 prevention of disease in man or animals;

1 (c) Substances (other than food) intended to affect the structure or any function of
2 the body of man or animals; and

3 (d) Substances intended for use as a component of any article specified in this
4 subsection.

5 It does not include devices or their components, parts, or accessories;

6 (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal
7 prosecution only, means an in-person medical examination of the patient conducted
8 by the prescribing practitioner or other health-care professional routinely relied
9 upon in the ordinary course of his or her practice, at which time the patient is
10 physically examined and a medical history of the patient is obtained. "In-person"
11 includes telehealth examinations. This subsection shall not be applicable to hospice
12 providers licensed pursuant to KRS Chapter 216B;

13 (13) "Hazardous chemical substance" includes any chemical substance used or intended
14 for use in the illegal manufacture of a controlled substance as defined in this section
15 or the illegal manufacture of methamphetamine as defined in KRS 218A.1431,
16 which:

17 (a) Poses an explosion hazard;

18 (b) Poses a fire hazard; or

19 (c) Is poisonous or injurious if handled, swallowed, or inhaled;

20 (14) "Immediate precursor" means a substance which is the principal compound
21 commonly used or produced primarily for use, and which is an immediate chemical
22 intermediary used or likely to be used in the manufacture of a controlled substance
23 or methamphetamine, the control of which is necessary to prevent, curtail, or limit
24 manufacture;

25 (15) "Intent to manufacture" means any evidence which demonstrates a person's
26 conscious objective to manufacture a controlled substance or methamphetamine.
27 Such evidence includes but is not limited to statements and a chemical substance's

1 usage, quantity, manner of storage, or proximity to other chemical substances or
2 equipment used to manufacture a controlled substance or methamphetamine;

3 (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and
4 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical,
5 positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer"
6 means the optical or geometric isomer;

7 (17) "Manufacture," except as provided in KRS 218A.1431, means the production,
8 preparation, propagation, compounding, conversion, or processing of a controlled
9 substance, either directly or indirectly by extraction from substances of natural
10 origin or independently by means of chemical synthesis, or by a combination of
11 extraction and chemical synthesis, and includes any packaging or repackaging of the
12 substance or labeling or relabeling of its container except that this term does not
13 include activities:

14 (a) By a practitioner as an incident to his administering or dispensing of a
15 controlled substance in the course of his professional practice;

16 (b) By a practitioner, or by his authorized agent under his supervision, for the
17 purpose of, or as an incident to, research, teaching, or chemical analysis and
18 not for sale; or

19 (c) By a pharmacist as an incident to his dispensing of a controlled substance in
20 the course of his professional practice;

21 (18) "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the
22 seeds thereof; the resin extracted from any part of the plant; and every compound,
23 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin
24 or any compound, mixture, or preparation which contains any quantity of these
25 substances;

26 (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only,
27 means an accounting of a patient's medical background, including but not limited to

- 1 prior medical conditions, prescriptions, and family background;
- 2 (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only,
 3 means a lawful order of a specifically identified practitioner for a specifically
 4 identified patient for the patient's health-care needs. "Medical order" may or may
 5 not include a prescription drug order;
- 6 (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only,
 7 means a record, other than for financial or billing purposes, relating to a patient,
 8 kept by a practitioner as a result of the practitioner-patient relationship;
- 9 (22) "Methamphetamine" means any substance that contains any quantity of
 10 methamphetamine, or any of its salts, isomers, or salts of isomers;
- 11 (23) "Narcotic drug" means any of the following, whether produced directly or indirectly
 12 by extraction from substances of vegetable origin, or independently by means of
 13 chemical synthesis, or by a combination of extraction and chemical synthesis:
- 14 (a) Opium and opiate, and any salt, compound, derivative, or preparation of
 15 opium or opiate;
- 16 (b) Any salt, compound, isomer, derivative, or preparation thereof which is
 17 chemically equivalent or identical with any of the substances referred to in
 18 paragraph (a) of this subsection, but not including the isoquinoline alkaloids
 19 of opium;
- 20 (c) Opium poppy and poppy straw;
- 21 (d) Coca leaves, except coca leaves and extracts of coca leaves from which
 22 cocaine, ecgonine, and derivatives of ecgonine or their salts have been
 23 removed;
- 24 (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- 25 (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
- 26 (g) Any compound, mixture, or preparation which contains any quantity of any of
 27 the substances referred to in paragraphs (a) to (f) of this subsection;

- 1 (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining
2 liability similar to morphine or being capable of conversion into a drug having
3 addiction-forming or addiction-sustaining liability. It does not include, unless
4 specifically designated as controlled under KRS 218A.030, the dextrorotatory
5 isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does
6 include its racemic and levorotatory forms;
- 7 (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its
8 seeds;
- 9 (26) "Person" means individual, corporation, government or governmental subdivision
10 or agency, business trust, estate, trust, partnership or association, or any other legal
11 entity;
- 12 (27) "Physical injury" has the same meaning it has in KRS 500.080;
- 13 (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- 14 (29) "Pharmacist" means a natural person licensed by this state to engage in the practice
15 of the profession of pharmacy;
- 16 (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific
17 investigator, optometrist as authorized in KRS 320.240, advanced registered nurse
18 practitioner as authorized under KRS 314.011, or other person licensed, registered,
19 or otherwise permitted by state or federal law to acquire, distribute, dispense,
20 conduct research with respect to, or to administer a controlled substance in the
21 course of professional practice or research in this state. "Practitioner" also includes
22 a physician, dentist, podiatrist, veterinarian, or advanced registered nurse
23 practitioner authorized under KRS 314.011 who is a resident of and actively
24 practicing in a state other than Kentucky and who is licensed and has prescriptive
25 authority for controlled substances under the professional licensing laws of another
26 state, unless the person's Kentucky license has been revoked, suspended, restricted,
27 or probated, in which case the terms of the Kentucky license shall prevail;

- 1 (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal
 2 prosecution only, means a medical relationship that exists between a patient and a
 3 practitioner or the practitioner's designee, after the practitioner or his designee has
 4 conducted at least one (1) good faith prior examination;
- 5 (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or
 6 combination or mixture of drugs or medicines, or proprietary preparation, signed or
 7 given or authorized by a medical, dental, chiropody, veterinarian, optometric
 8 practitioner, or advanced registered nurse practitioner, and intended for use in the
 9 diagnosis, cure, mitigation, treatment, or prevention of disease in man or other
 10 animals;
- 11 (33) "Prescription blank," with reference to a controlled substance, means a document
 12 that meets the requirements of KRS 218A.204 and 217.216;
- 13 (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting
 14 of a controlled substance;
- 15 (35) "Synthetic cannabinoid agonists or piperazines" means any chemical compound
 16 that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-
 17 Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole;
 18 1-Pentyl-3-(1-naphthoyl)indole; dexamabinol; or 2-[(1R,3S)-3-
 19 hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include
 20 synthetic cannabinoids that require a prescription, are approved by the United
 21 States Food and Drug Administration, and are dispensed in accordance with
 22 state and federal law;
- 23 (36) "Second or subsequent offense" means that for the purposes of this chapter an
 24 offense is considered as a second or subsequent offense, if, prior to his conviction of
 25 the offense, the offender has at any time been convicted under this chapter, or under
 26 any statute of the United States, or of any state relating to substances classified as
 27 controlled substances or counterfeit substances, except that a prior conviction for a

1 nontrafficking offense shall be treated as a prior offense only when the subsequent
 2 offense is a nontrafficking offense. For the purposes of this section, a conviction
 3 voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under
 4 this chapter;

5 ~~(37)~~~~(36)~~ "Sell" means to dispose of a controlled substance to another person for
 6 consideration or in furtherance of commercial distribution;

7 ~~(38)~~~~(37)~~ "Serious physical injury" has the same meaning it has in KRS 500.080;

8 ~~(39)~~~~(38)~~ "Telehealth" has the same meaning it has in KRS 311.550;

9 ~~(40)~~~~(39)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances
 10 contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or
 11 synthetic substances, derivatives, and their isomers with similar chemical structure
 12 and pharmacological activity such as the following:

- 13 1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
- 14 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
- 15 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

16 ~~(41)~~~~(40)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture,
 17 distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute,
 18 dispense, or sell a controlled substance;

19 ~~(42)~~~~(41)~~ "Transfer" means to dispose of a controlled substance to another person
 20 without consideration and not in furtherance of commercial distribution; and

21 ~~(43)~~~~(42)~~ "Ultimate user" means a person who lawfully possesses a controlled substance
 22 for his own use or for the use of a member of his household or for administering to
 23 an animal owned by him or by a member of his household.

24 ➔Section 5. KRS 218A.050 is amended to read as follows:

25 Unless otherwise rescheduled by regulation of the Cabinet for Health and Family
 26 Services, the controlled substances listed in this section are included in Schedule I:

27 (1) Any material, compound, mixture, or preparation which contains any quantity of the

1 following opiates, including their isomers, esters, ethers, salts, and salts of isomers,
 2 esters, and ethers, unless specifically excepted, whenever the existence of these
 3 isomers, esters, ethers, or salts is possible within the specific chemical designation:
 4 Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine;
 5 Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol;
 6 Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide;
 7 Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene;
 8 Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene;
 9 Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide;
 10 Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol;
 11 Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan;
 12 Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide;
 13 Trimeperidine.

14 (2) Any material, compound, mixture, or preparation which contains any quantity of the
 15 following opium derivatives, including their salts, isomers, and salts of isomers,
 16 unless specifically excepted, whenever the existence of these salts, isomers, or salts
 17 of isomers is possible within the specific chemical designation: Acetorphine;
 18 Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-
 19 Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin;
 20 Hydromorphanol; Methyl-desorphine; Methyl-dihydromorphine; Morphine
 21 methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine;
 22 Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

23 (3) Any material, compound, mixture, or preparation which contains any quantity of the
 24 following hallucinogenic substances, their salts, isomers, or salts of isomers, unless
 25 specifically excepted, whenever the existence of these salts, isomers, and salts of
 26 isomers is possible within the specific chemical designation: 3, 4-
 27 methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4,

1 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-
 2 methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide;
 3 Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl
 4 benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2
 5 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone,
 6 Cat, and Ephedrone); *synthetic cannabinoid agonists or piperazines*.

7 (4) Any material, compound, mixture, or preparation which contains any quantity of the
 8 following substance having a depressant effect on the central nervous system,
 9 including its salts, isomers, and salts of isomers, unless specifically excepted,
 10 whenever the existence of these salts, isomers, or salts of isomers is possible within
 11 the specific chemical designation: gamma hydroxybutyric acid.

12 ➔Section 6. KRS 217.065 is amended to read as follows:

13 Except for violations of KRS 218A.350, a drug or device shall be deemed to be
 14 misbranded:

15 (1) If its labeling is false or misleading in any particular;

16 (2) If in package form unless it bears a label containing:

17 (a) The name and place of business of the manufacturer, packer, or distributor,
 18 except that, in the case of a prescription drug, it shall bear the name and place
 19 of business of the manufacturer, and the name and place of business of the
 20 packer, or distributor, if other than the manufacturer; and

21 (b) An accurate statement of the quantity of the contents in terms of weight,
 22 measure, or numerical count; provided that reasonable variations shall be
 23 permitted, and exemptions as to small packages shall be established, by
 24 regulations prescribed by the secretary;

25 (3) If any word, statement, or other information required by or under authority of KRS
 26 217.005 to 217.215 to appear on the label or labeling is not prominently placed
 27 thereon with such conspicuousness (as compared with other words, statements,

1 designs or devices, in the labeling) and in such terms as to render it likely to be read
 2 and understood by the ordinary individual under customary conditions of purchase
 3 and use;

4 (4) If it is for use by man and contains any quantity of the narcotic or hypnotic
 5 substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal,
 6 chloral, coca, cocaine, codeine, heroin, marijuana, *synthetic cannabinoid agonists*
 7 *or piperazines*, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any
 8 chemical derivative of such substance, which derivative has been by the secretary
 9 after investigation, found to be, and by regulations under KRS 217.005 to 217.215
 10 designated as, habit forming; unless its label bears the name and quantity or
 11 proportion of such substance or derivative and in juxtaposition therewith the
 12 statement "Warning -- May be habit-forming";

13 (5) If it is a drug and is not designated solely by a name recognized in an official
 14 compendium unless its label bears:

15 (a) The common or usual name of the drug, if such there be; and
 16 (b) In case it is fabricated from two (2) or more ingredients, the common or usual
 17 name of each active ingredient, including the kind and quantity or proportion
 18 of any alcohol, and also including whether active or not the name and quantity
 19 or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin,
 20 amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis,
 21 digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or
 22 any derivative or preparation of any such substances, contained therein;
 23 provided that to the extent that compliance with this subsection is
 24 impracticable, exemptions shall be established by regulations promulgated by
 25 the secretary;

26 (6) Unless its labeling bears:

27 (a) Adequate directions for use; and

1 (b) Such adequate warnings against use in those pathological conditions or by
2 children where its use may be dangerous to health, or against unsafe dosage or
3 methods or duration of administration or application, in such manner and
4 form, as are necessary for the protection of users; provided that where any
5 requirement of subsection (a) of this subsection, as applied to any drug or
6 device, is not necessary for the protection of the public health, the secretary
7 shall promulgate regulations exempting such drug or device from such
8 requirements;

9 (7) If it purports to be a drug the name of which is recognized in an official
10 compendium, unless it is packaged and labeled as prescribed therein; provided that
11 the method of packing may be modified with a consent of the cabinet. Whenever a
12 drug is recognized in both the United States Pharmacopoeia and the Homeopathic
13 Pharmacopoeia of the United States, it shall be subject to the requirements of the
14 United States Pharmacopoeia with respect to packaging and labeling unless it is
15 labeled and offered for sale as a homeopathic drug, in which case it shall be subject
16 to the provisions of the Homeopathic Pharmacopoeia of the United States, and not
17 to those of the United States Pharmacopoeia;

18 (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is
19 packaged in such form and manner, and its label bears a statement of such
20 precautions, as the secretary shall by regulations require as necessary for the
21 protection of public health. No such regulation shall be established for any drug
22 recognized in an official compendium until the secretary shall have informed the
23 appropriate body charged with the revision of such compendium of the need for
24 such packaging or labeling requirements and such body shall have failed within a
25 reasonable time to prescribe such requirements;

26 (9) (a) If it is a drug and its container is so made, formed, or filled as to be misleading;
27 or

- 1 (b) If it is an imitation of another drug; or
- 2 (c) If it is offered for sale under the name of another drug;
- 3 (10) If it is dangerous to health when used in the dosage, or with the frequency or
- 4 duration prescribed, recommended, or suggested in the labeling thereof;
- 5 (11) If:
- 6 (a) It is a drug intended for use by man which is a habit forming drug to which
- 7 subsection (4) of this section applies; or because of its toxicity or other
- 8 potentiality for harmful effect, or the method of its use, or the collateral
- 9 measures necessary to its use is not safe for use except under the supervision
- 10 of a practitioner, and is not dispensed upon a prescription unless prior to
- 11 dispensing its label bears the statement "Caution: Federal law prohibits
- 12 dispensing without prescription"; or
- 13 (b) It is a drug or device and its label (as originally packed) directs that it is to be
- 14 dispensed or sold only on prescription, unless it is dispensed or sold on a
- 15 prescription of an authorized practitioner and its label (as dispensed) bears the
- 16 name and place of business of the dispenser or seller, the serial number and
- 17 date of such prescription, and the name of such licensed practitioner. Such
- 18 prescriptions shall not be refilled except on the specific authorization of the
- 19 prescribing practitioner; provided that where any requirement of this
- 20 subsection, as applied to any drug or device, is not necessary for the protection
- 21 of the public health, the secretary shall promulgate regulations exempting such
- 22 drug or device from such requirement;
- 23 (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of
- 24 the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be
- 25 exempt from the requirements of this section if:
- 26 (a) Such practitioner is licensed by law to administer such drug; and
- 27 (b) Such drug bears a label containing the name and place of business of the

1 seller, the serial number and date of such prescription, and the name of such
2 practitioner.

3 (13) It is not the intention of subsection (2)(a) of this section as amended herein to
4 require the name and place of business of the wholesaler to appear upon the label of
5 the package unless otherwise required by this section.

6 ➔Section 7. KRS 218A.1401 is amended to read as follows:

7 (1) A person is guilty of selling controlled substances to a minor when he, being
8 eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any
9 quantity of a controlled substance *other than synthetic cannabinoid agonists or*
10 *piperazines* to any person under eighteen (18) years of age.

11 (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a
12 Class B felony for each subsequent offense, unless a more severe penalty for
13 trafficking in controlled substances is applicable, in which case the higher penalty
14 shall apply.

15 ➔Section 8. KRS 218A.141 is amended to read as follows:

16 Any person convicted of, pleading guilty to, or entering an Alford plea to any offense
17 involving trafficking in a controlled substance, *trafficking in synthetic cannabinoid*
18 *agonists or piperazines*, or trafficking in marijuana shall, in addition to any other penalty
19 authorized by law, be sentenced to:

- 20 (1) Pay the costs of disposal of the controlled substances;
- 21 (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used
22 in or in furtherance of the trafficking offense;
- 23 (3) Pay the costs involved with environmental clean-up and remediation required for
24 the real property and personal property used for or in furtherance of the trafficking
25 offenses; and
- 26 (4) Pay the costs of protecting the public from dangers from chemicals, materials, and
27 other items used for or in furtherance of the trafficking offense from the time of the

1 arrest until the time that the clean-up or remediation of the real and personal
 2 property is concluded. The Commonwealth shall have a lien on all of the assets of
 3 the defendant until the amount specified by the court under this subsection is paid in
 4 full. The Commonwealth's attorney shall file the lien.

5 ➔Section 9. KRS 218A.1411 is amended to read as follows:

6 (1) Any person who unlawfully traffics in a controlled substance classified in Schedules
 7 I, II, III, IV or V, or a controlled substance analogue in any building used primarily
 8 for classroom instruction in a school or on any premises located within one
 9 thousand (1,000) yards of any school building used primarily for classroom
 10 instruction shall be guilty of a Class D felony, unless a more severe penalty is set
 11 forth in this chapter, in which case the higher penalty shall apply. The measurement
 12 shall be taken in a straight line from the nearest wall of the school to the place of
 13 violation.

14 (2) The provisions of subsection (1) of this section shall not apply to any
 15 misdemeanor offense relating to synthetic cannabinoid agonists or piperazines.

16 ➔Section 10. KRS 218A.1413 is amended to read as follows:

17 (1) A person is guilty of trafficking in a controlled substance in the second degree
 18 when:

19 (a) He knowingly and unlawfully traffics in a controlled substance classified in
 20 Schedules I and II which is not a narcotic drug; or specified in KRS
 21 218A.1412; or a controlled substance classified in Schedule III; but not
 22 lysergic acid diethylamide, phencyclidine, synthetic cannabinoid agonists or
 23 piperazines, or marijuana; or

24 (b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells
 25 an anabolic steroid for:

- 26 1. Enhancing performance in an exercise, sport, or game; or
- 27 2. Hormonal manipulation intended to increase muscle mass, strength, or

1 weight in the human species without a medical necessity.

2 (2) Any person who violates the provisions of subsection (1) of this section shall:

3 (a) For the first offense be guilty of a Class D felony.

4 (b) For a second or subsequent offense be guilty of a Class C felony.

5 ➔Section 11. KRS 218A.1416 is amended to read as follows:

6 (1) A person is guilty of possession of a controlled substance in the second degree
7 when he knowingly and unlawfully possesses: a controlled substance classified in
8 Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a
9 controlled substance classified in Schedule III; but not lysergic acid diethylamide,
10 phencyclidine, *synthetic cannabinoid agonists or piperazines*, or marijuana.

11 (2) Possession of a controlled substance in the second degree is:

12 (a) For a first offense a Class A misdemeanor.

13 (b) For a second or subsequent offense a Class D felony.

14 ➔Section 12. KRS 218A.276 is amended to read as follows:

15 (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 *or*
16 *possession of synthetic cannabinoid agonists or piperazines pursuant to Section 2*
17 *of this Act* may be ordered to a facility designated by the secretary of the Cabinet
18 for Health and Family Services where a program of education, treatment, and
19 rehabilitation not to exceed ninety (90) days in duration may be prescribed. The
20 person ordered to the designated facility shall present himself for registration and
21 initiation of a treatment program within five (5) days of the date of sentencing. If
22 without good cause, the person fails to appear at the designated facility within the
23 specified time, or if any time during the program of treatment prescribed, the
24 authorized clinical director of the facility finds that the person is unwilling to
25 participate in his treatment and rehabilitation, the director shall notify the
26 sentencing court. Upon receipt of notification, the court shall cause the person to be
27 brought before it and may continue the order of treatment and rehabilitation, or may

1 order confinement in the county jail for not more than ninety (90) days or a fine of
2 not more than two hundred fifty dollars (\$250), or both. Upon discharge of the
3 person from the facility by the secretary of the Cabinet for Health and Family
4 Services, or his designee, prior to the expiration of the ninety (90) day period or
5 upon satisfactory completion of ninety (90) days of treatment, the person shall be
6 deemed finally discharged from sentence. The secretary, or his designee, shall notify
7 the sentencing court of the date of such discharge from the facility.

8 (2) The secretary of the Cabinet for Health and Family Services, or his designee, shall
9 inform each court of the identity and location of the facility to which a person
10 sentenced by that court under this chapter shall be initially ordered.

11 (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant
12 to this chapter, transportation to the facility shall be provided by order of the court
13 when the court finds the person unable to convey himself to the facility within five
14 (5) days of sentencing by reason of physical infirmity or financial incapability.

15 (4) The sentencing court shall immediately notify the designated facility of the sentence
16 and its effective date.

17 (5) The secretary of the Cabinet for Health and Family Services, or his designee, may
18 authorize transfer of the person from the initially designated facility to another
19 facility for therapeutic purposes. The sentencing court shall be notified of
20 termination of treatment by the terminating facility.

21 (6) Responsibility for payment for treatment services rendered to persons pursuant to
22 this section shall be as under the statutes pertaining to payment by patients and
23 others for services rendered by the Cabinet for Health and Family Services, unless
24 the person and the facility shall arrange otherwise.

25 (7) None of the provisions of this chapter shall be deemed to preclude the court from
26 exercising its usual discretion with regard to ordering probation or conditional
27 discharge.

1 (8) In the case of any person who has been convicted of possession of marijuana or
2 possession of synthetic cannabinoid agonists or piperazines, the court may set
3 aside and void the conviction upon satisfactory completion of treatment, probation,
4 or other sentence, and issue to the person a certificate to that effect. A conviction
5 voided under this subsection shall not be deemed a first offense for purposes of this
6 chapter or deemed a conviction for purposes of disqualifications or disabilities
7 imposed by law upon conviction of a crime.

8 ➔Section 13. KRS 218A.410 is amended to read as follows:

9 (1) The following are subject to forfeiture:

10 (a) Controlled substances listed in Schedule I that are possessed, transferred, sold,
11 or offered for sale in violation of this chapter are contraband and shall be
12 seized and summarily forfeited to the state.

13 (b) Controlled substances listed in Schedule I, which are seized or come into the
14 possession of the state, the owners of which are unknown, are contraband and
15 shall be summarily forfeited to the state.

16 (c) Species of plants from which controlled substances in Schedules I and II may
17 be derived which have been planted or cultivated in violation of this chapter,
18 or of which the owners or cultivators are unknown, or which are wild growths,
19 may be seized and summarily destroyed or forfeited to the state. The failure,
20 upon demand by the law enforcement agency or its authorized agent, of the
21 person in occupancy or in control of land or premises upon which the species
22 of plants are growing or being stored, to produce an appropriate registration,
23 or proof that he is the holder thereof, constitutes authority for the seizure and
24 forfeiture of the plants.

25 (d) All substances, machinery, or devices used for the manufacture, packaging,
26 repackaging, or marking, and books, papers, and records, and all vehicles
27 owned and used by the seller or distributor for the manufacture, distribution,

1 sale, or transfer of substances in violation of KRS 218A.350 shall be seized
 2 and forfeited to the state. Substances manufactured, held, or distributed in
 3 violation of KRS 218A.350 shall be deemed contraband.

4 (e) All controlled substances which have been manufactured, distributed,
 5 dispensed, possessed, being held, or acquired in violation of this chapter.

6 (f) All raw materials, products, and equipment of any kind which are used, or
 7 intended for use, in manufacturing, compounding, processing, delivering,
 8 importing, or exporting any controlled substance in violation of this chapter.

9 (g) All property which is used, or intended for use, as a container for property
 10 described in paragraph (e) or (f) of this subsection.

11 (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or
 12 intended for use, to transport, or in any manner to facilitate the transportation,
 13 for the purpose of sale or receipt of property described in paragraph (e) or (f)
 14 of this subsection, but:

15 1. No conveyance used by any person as a common carrier in the
 16 transaction of business as a common carrier is subject to forfeiture under
 17 this section unless it is proven beyond a reasonable doubt that the owner
 18 or other person in charge of the conveyance is a consenting party or
 19 privy to a violation of this chapter;

20 2. No conveyance is subject to forfeiture under this section by reason of
 21 any act or omission established by the owner thereof to have been
 22 committed or omitted without his knowledge or consent;

23 3. A forfeiture of a conveyance encumbered by a bona fide security interest
 24 is subject to the interest of the secured party if he neither had knowledge
 25 of nor consented to the act or omission;

26 4. The forfeiture provisions of this paragraph shall not apply to any
 27 misdemeanor offense relating to marijuana or synthetic cannabinoid

agonists or piperazines.

- (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
- (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.
- (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana or synthetic cannabinoid agonists or piperazines, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the

1 Commonwealth to have been committed or omitted with the knowledge or
2 consent of the owner.

3 (2) Title to all property, including all interests in the property, forfeit under this section
4 vests in the Commonwealth on the commission of the act or omission giving rise to
5 forfeiture under this section together with the proceeds of the property after the
6 time. Any property or proceeds subsequently transferred to any person shall be
7 subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee
8 establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser
9 for value without actual or constructive notice of the act or omission giving rise to
10 the forfeiture.

11 (3) If any of the property described in this section cannot be located; has been
12 transferred to, sold to, or deposited with a third party; has been placed beyond the
13 jurisdiction of the court; has been substantially diminished in value by any act or
14 omission of the defendant; or, has been commingled with any property which
15 cannot be divided without difficulty, the court shall order the forfeiture of any other
16 property of the defendant up to the value of any property subject to forfeiture under
17 this section.

18 ➔Section 14. KRS 218A.500 is amended to read as follows:

19 As used in this section and KRS 218A.510:

20 (1) "Drug paraphernalia" means all equipment, products and materials of any kind
21 which are used, intended for use, or designed for use in planting, propagating,
22 cultivating, growing, harvesting, manufacturing, compounding, converting,
23 producing, processing, preparing, testing, analyzing, packaging, repackaging,
24 storing, containing, concealing, injecting, ingesting, inhaling, or otherwise
25 introducing into the human body a controlled substance in violation of this chapter.
26 It includes, but is not limited to:

27 (a) Kits used, intended for use, or designed for use in planting, propagating,

- 1 cultivating, growing, or harvesting of any species of plant which is a
2 controlled substance or from which a controlled substance can be derived;
- 3 (b) Kits used, intended for use, or designed for use in manufacturing,
4 compounding, converting, producing, processing, or preparing controlled
5 substances;
- 6 (c) Isomerization devices used, intended for use, or designed for use in increasing
7 the potency of any species of plant which is a controlled substance;
- 8 (d) Testing equipment used, intended for use, or designed for use in identifying,
9 or in analyzing the strength, effectiveness or purity of controlled substances;
- 10 (e) Scales and balances used, intended for use, or designed for use in weighing or
11 measuring controlled substances;
- 12 (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite,
13 dextrose and lactose, used, intended for use, or designed for use in cutting
14 controlled substances;
- 15 (g) Separation gins and sifters used, intended for use, or designed for use in
16 removing twigs and seeds from, or in otherwise cleaning or refining
17 marijuana;
- 18 (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for
19 use, or designed for use in compounding controlled substances;
- 20 (i) Capsules, balloons, envelopes, and other containers used, intended for use, or
21 designed for use in packaging small quantities of controlled substances;
- 22 (j) Containers and other objects used, intended for use, or designed for use in
23 storing or concealing controlled substances;
- 24 (k) Hypodermic syringes, needles, and other objects used, intended for use, or
25 designed for use in parenterally injecting controlled substances into the human
26 body;
- 27 (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or

1 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the
2 human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic
3 pipes with or without screens, permanent screens, hashish heads, or punctured
4 metal bowls; water pipes; carburetion tubes and devices; smoking and
5 carburetion masks; roach clips which mean objects used to hold burning
6 material, such as marijuana cigarettes, that have become too small or too short
7 to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber
8 pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice
9 pipes or chillers.

10 (2) It is unlawful for any person to use, or to possess with intent to use, drug
11 paraphernalia for the purpose of planting, propagating, cultivating, growing,
12 harvesting, manufacturing, compounding, converting, producing, processing,
13 preparing, testing, analyzing, packing, repacking, storing, containing, concealing,
14 injecting, ingesting, inhaling, or otherwise introducing into the human body a
15 controlled substance in violation of this chapter.

16 (3) It is unlawful for any person to deliver, possess with intent to deliver, or
17 manufacture with intent to deliver, drug paraphernalia, knowing, or under
18 circumstances where one reasonably should know, that it will be used to plant,
19 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
20 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
21 inhale, or otherwise introduce into the human body a controlled substance in
22 violation of this chapter.

23 (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other
24 publication any advertisement, knowing, or under circumstances where one
25 reasonably should know, that the purpose of the advertisement, in whole or in part,
26 is to promote the sale of objects designed or intended for use as drug paraphernalia.

27 (5) Any person who violates any provision of this section shall be guilty of a Class A

1 misdemeanor~~[for the first offense and a Class D felony for subsequent offenses]~~.

2 ➔Section 15. KRS 218A.992 is amended to read as follows:

3 (1) Other provisions of law notwithstanding, any person who is convicted of any
4 violation of this chapter who, at the time of the commission of the offense and in
5 furtherance of the offense, was in possession of a firearm, shall:

6 (a) Be penalized one (1) class more severely than provided in the penalty
7 provision pertaining to that offense if it is a felony; or

8 (b) Be penalized as a Class D felon if the offense would otherwise be a
9 misdemeanor.

10 (2) The provisions of this section shall not apply to a violation of KRS 218A.210 or
11 Section 1, 2, or 3 of this Act.

12 ➔Section 16. KRS 530.064 is amended to read as follows:

13 (1) A person is guilty of unlawful transaction with a minor in the first degree when he
14 or she knowingly induces, assists, or causes a minor to engage in:

15 (a) Illegal sexual activity; or

16 (b) Illegal controlled substances activity other than activity involving marijuana
17 or synthetic cannabinoid agonists or piperazines as defined in Section 4 of
18 this Act;

19 Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100
20 where that offense involves commercial sexual activity.

21 (2) Unlawful transaction with a minor in the first degree is a:

22 (a) Class C felony if the minor so used is less than eighteen (18) years old at the
23 time the minor engages in the prohibited activity;

24 (b) Class B felony if the minor so used is less than sixteen (16) years old at the
25 time the minor engages in the prohibited activity; and

26 (c) Class A felony if the minor so used incurs physical injury thereby.

27 ➔Section 17. KRS 189A.010 is amended to read as follows:

- 1 (1) A person shall not operate or be in physical control of a motor vehicle anywhere in
 2 this state:
- 3 (a) Having an alcohol concentration of 0.08 or more as measured by a
 4 scientifically reliable test or tests of a sample of the person's breath or blood
 5 taken within two (2) hours of cessation of operation or physical control of a
 6 motor vehicle;
- 7 (b) While under the influence of alcohol;
- 8 (c) While under the influence of any other substance or combination of
 9 substances which impairs one's driving ability;
- 10 (d) While the presence of a controlled substance listed in subsection (12) of this
 11 section is detected in the blood, as measured by a scientifically reliable test,
 12 or tests, taken within two (2) hours of cessation of operation or physical
 13 control of a motor vehicle;
- 14 (e) While under the combined influence of alcohol and any other substance which
 15 impairs one's driving ability; or
- 16 ~~(f)(e)~~ Having an alcohol concentration of 0.02 or more as measured by a
 17 scientifically reliable test or tests of a sample of the person's breath or blood
 18 taken within two (2) hours of cessation of operation or physical control of a
 19 motor vehicle, if the person is under the age of twenty-one (21).
- 20 (2) With the exception of the results of the tests administered pursuant to KRS
 21 189A.103(7), if the sample of the person's blood or breath that is used to determine
 22 the alcohol concentration thereof was obtained more than two (2) hours after
 23 cessation of operation or physical control of a motor vehicle, the results of the test
 24 or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or
 25 ~~(f)(e)~~ of this section. The results of the test or tests, however, may be admissible in
 26 a prosecution under subsection (1)(b) or ~~(e)(d)~~ of this section.
- 27 (3) In any prosecution for a violation of subsection (1)(b) or ~~(e)(d)~~ of this section in

1 which the defendant is charged with having operated or been in physical control of a
 2 motor vehicle while under the influence of alcohol, the alcohol concentration in the
 3 defendant's blood as determined at the time of making analysis of his blood or
 4 breath shall give rise to the following presumptions:

5 (a) If there was an alcohol concentration of less than 0.05 based upon the
 6 definition of alcohol concentration in KRS 189A.005, it shall be presumed
 7 that the defendant was not under the influence of alcohol; and

8 (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08
 9 based upon the definition of alcohol concentration in KRS 189A.005, that fact
 10 shall not constitute a presumption that the defendant either was or was not
 11 under the influence of alcohol, but that fact may be considered, together with
 12 other competent evidence, in determining the guilt or innocence of the
 13 defendant.

14 The provisions of this subsection shall not be construed as limiting the introduction
 15 of any other competent evidence bearing upon the questions of whether the
 16 defendant was under the influence of alcohol or other substances, in any prosecution
 17 for a violation of subsection (1)(b) or ~~(e)~~~~(d)~~ of this section.

18 (4) (a) Except as provided in paragraph (b) of this subsection, the fact that any
 19 person charged with violation of subsection (1) of this section is legally
 20 entitled to use any substance, including alcohol, shall not constitute a defense
 21 against any charge of violation of subsection (1) of this section.

22 (b) A laboratory test or tests for a controlled substance shall be inadmissible as
 23 evidence in a prosecution under subsection (1)(d) of this section upon a
 24 finding by the court that the defendant consumed the substance under a
 25 valid prescription from a practitioner, as defined in KRS 218A.010, acting
 26 in the course of his or her professional practice.

27 (5) Any person who violates the provisions of paragraph (a), (b), (c), ~~(d)~~, or (e) of

1 subsection (1) of this section shall:

2 (a) For the first offense within a five (5) year period, be fined not less than two
3 hundred dollars (\$200) nor more than five hundred dollars (\$500), or be
4 imprisoned in the county jail for not less than forty-eight (48) hours nor more
5 than thirty (30) days, or both. Following sentencing, the defendant may apply
6 to the judge for permission to enter a community labor program for not less
7 than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or
8 imprisonment, or both. If any of the aggravating circumstances listed in
9 subsection (11) of this section are present while the person was operating or in
10 physical control of a motor vehicle, the mandatory minimum term of
11 imprisonment shall be four (4) days, which term shall not be suspended,
12 probated, conditionally discharged, or subject to any other form of early
13 release.

14 (b) For the second offense within a five (5) year period, be fined not less than
15 three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500)
16 and shall be imprisoned in the county jail for not less than seven (7) days nor
17 more than six (6) months and, in addition to fine and imprisonment, may be
18 sentenced to community labor for not less than ten (10) days nor more than six
19 (6) months. If any of the aggravating circumstances listed in subsection (11)
20 of this section are present, the mandatory minimum term of imprisonment
21 shall be fourteen (14) days, which term shall not be suspended, probated,
22 conditionally discharged, or subject to any other form of early release.

23 (c) For a third offense within a five (5) year period, be fined not less than five
24 hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall
25 be imprisoned in the county jail for not less than thirty (30) days nor more
26 than twelve (12) months and may, in addition to fine and imprisonment, be
27 sentenced to community labor for not less than ten (10) days nor more than

1 twelve (12) months. If any of the aggravating circumstances listed in
 2 subsection (11) of this section are present, the mandatory minimum term of
 3 imprisonment shall be sixty (60) days, which term shall not be suspended,
 4 probated, conditionally discharged, or subject to any other form of early
 5 release.

6 (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a
 7 Class D felony. If any of the aggravating circumstances listed in subsection
 8 (11) of this section are present, the mandatory minimum term of imprisonment
 9 shall be two hundred forty (240) days, which term shall not be suspended,
 10 probated, conditionally discharged, or subject to any other form of release.

11 (e) For purposes of this subsection, prior offenses shall include all convictions in
 12 this state, and any other state or jurisdiction, for operating or being in control
 13 of a motor vehicle while under the influence of alcohol or other substances
 14 that impair one's driving ability, or any combination of alcohol and such
 15 substances, or while having an unlawful alcohol concentration, or driving
 16 while intoxicated, but shall not include convictions for violating subsection
 17 (1)~~(2)(e)~~ of this section. A court shall receive as proof of a prior conviction a
 18 copy of that conviction, certified by the court ordering the conviction.

19 (6) Any person who violates the provisions of subsection (1)~~(2)(e)~~ of this section shall
 20 have his driving privilege or operator's license suspended by the court for a period
 21 of no less than thirty (30) days but no longer than six (6) months, and the person
 22 shall be fined no less than one hundred dollars (\$100) and no more than five
 23 hundred dollars (\$500), or sentenced to twenty (20) hours of community service in
 24 lieu of a fine. A person subject to the penalties of this subsection shall not be
 25 subject to the penalties established in subsection (5) of this section or any other
 26 penalty established pursuant to KRS Chapter 189A, except those established in
 27 KRS 189A.040(1).

- 1 (7) If the person is under the age of twenty-one (21) and there was an alcohol
 2 concentration of 0.08 or greater based on the definition of alcohol concentration in
 3 KRS 189A.005, the person shall be subject to the penalties established pursuant to
 4 subsection (5) of this section.
- 5 (8) For a second or third offense within a five (5) year period, the minimum sentence of
 6 imprisonment or community labor shall not be suspended, probated, or subject to
 7 conditional discharge or other form of early release. For a fourth or subsequent
 8 offense under this section, the minimum term of imprisonment shall be one hundred
 9 twenty (120) days, and this term shall not be suspended, probated, or subject to
 10 conditional discharge or other form of early release. For a second or subsequent
 11 offense, at least forty-eight (48) hours of the mandatory sentence shall be served
 12 consecutively.
- 13 (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of
 14 the penalties shall be assessed and that penalty shall not be suspended, probated, or
 15 subject to conditional discharge or other form of early release.
- 16 (10) In determining the five (5) year period under this section, the period shall be
 17 measured from the dates on which the offenses occurred for which the judgments of
 18 conviction were entered.
- 19 (11) For purposes of this section, aggravating circumstances are any one (1) or more of
 20 the following:
- 21 (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the
 22 speed limit;
 - 23 (b) Operating a motor vehicle in the wrong direction on a limited access highway;
 - 24 (c) Operating a motor vehicle that causes an accident resulting in death or serious
 25 physical injury as defined in KRS 500.080;
 - 26 (d) Operating a motor vehicle while the alcohol concentration in the operator's
 27 blood or breath is 0.15~~[0.18]~~ or more as measured by a test or tests of a

sample of the operator's blood or breath taken within two (2) hours of
cessation of operation of the motor vehicle;

(e) Refusing to submit to any test or tests of one's blood, breath, or urine
requested by an officer having reasonable grounds to believe the person was
operating or in physical control of a motor vehicle in violation of subsection
(1) of this section; and

(f) Operating a motor vehicle that is transporting a passenger under the age of
twelve (12) years old.

(12) The substances applicable to a prosecution under subsection (1)(d) of this section

are:

(a) Any Schedule I controlled substance except marijuana;

(b) Alprazolam;

(c) Amphetamine;

(d) Buprenorphine;

(e) Butalbital;

(f) Carisoprodol;

(g) Cocaine;

(h) Diazepam;

(i) Hydrocodone;

(j) Meprobamate;

(k) Methadone;

(l) Methamphetamine;

(m) Oxycodone;

(n) Promethazine;

(o) Propoxyphene; and

(p) Zolpidem.

➔Section 18. KRS 189A.040 is amended to read as follows:

- 1 (1) In addition to any other penalty prescribed by KRS 189A.010(5)(a) or (6), the court
 2 shall sentence the person to attend an alcohol or substance abuse education or
 3 treatment program subject to the following terms and conditions for a first offender
 4 or a person convicted under KRS 189A.010(1)~~(2)(e)~~:
- 5 (a) The treatment or education shall be for a period of ninety (90) days and the
 6 program shall provide an assessment of the defendant's alcohol or other
 7 substance abuse problems, which shall be performed at the start of the
 8 program;
 - 9 (b) Each defendant shall pay the cost of the education or treatment program up to
 10 his ability to pay but no more than the actual cost of the treatment;
 - 11 (c) Upon written report to the court by the administrator of the program that the
 12 defendant has completed the program recommended by the administrator
 13 based upon the assessment of the defendant, the defendant shall be released
 14 prior to the expiration of the ninety (90) day period; and
 - 15 (d) Failure to complete the education or treatment program or to pay the amount
 16 specified by the court for education or treatment shall constitute contempt, and
 17 the court shall, in addition to any other remedy for contempt, reinstitute all
 18 penalties which were previously imposed but suspended or delayed pending
 19 completion of the education or treatment program.
- 20 (2) In addition to any other penalty prescribed by KRS 189A.010(5)(b), the court shall
 21 sentence the person to an alcohol or substance abuse treatment program subject to
 22 the following terms and conditions for a second offender:
- 23 (a) The sentence shall be for a period of one (1) year and the program shall
 24 provide an assessment of the defendant's alcohol or other substance abuse
 25 problems, which shall be performed at the start of the program;
 - 26 (b) Each defendant shall pay the cost of the treatment program up to his ability to
 27 pay but no more than the actual cost of the treatment;

- 1 (c) Upon written report to the court by the administrator of the program that the
2 defendant has completed the program recommended by the administrator
3 based upon the assessment of the defendant, the defendant may be released
4 prior to the expiration of the one (1) year period; and
- 5 (d) Failure to complete the treatment program or to pay the amount specified by
6 the court for treatment shall constitute contempt of court and the court shall,
7 in addition to any other remedy for contempt, reinstitute all penalties which
8 were previously imposed but suspended or delayed pending the completion of
9 the treatment program.
- 10 (3) In addition to any other penalty prescribed by KRS 189A.010(5)(c) or (d), the court
11 shall sentence the person to an alcohol or substance abuse treatment program
12 subject to the following terms and conditions for a third or subsequent offender:
- 13 (a) The sentence shall be for a period of one (1) year and the program shall
14 provide an assessment of the defendant's alcohol or other substance abuse
15 problems, which shall be performed at the start of the program. The program
16 may be an inpatient or residential-type program;
- 17 (b) Each defendant shall pay the cost of the treatment program up to his ability to
18 pay but no more than the actual cost of the program;
- 19 (c) A defendant, upon written recommendation to the court by the administrator
20 of the program, may be released from the inpatient or residential program
21 prior to the expiration of one (1) year but shall be retained in the program on
22 an outpatient basis for the remainder of the year period; and
- 23 (d) Failure to complete the treatment program or to pay the amount specified by
24 the court for treatment shall constitute contempt of court, and the court shall,
25 in addition to any other remedy for contempt, reinstitute all penalties which
26 were previously imposed but suspended or delayed pending completion of the
27 treatment program.

1 (4) Costs of treatment or education programs which are paid from the service fee
 2 established by KRS 189A.050, or from state or federal funds, or any combination
 3 thereof, shall be deducted from the amount which the defendant must pay.

4 (5) For the purposes of this section, "treatment" means service in an alcohol or
 5 substance abuse education or treatment program or facility licensed, regulated, and
 6 monitored by the Cabinet for Health and Family Services for services as required
 7 under this section.

8 (6) The Cabinet for Health and Family Services shall promulgate administrative
 9 regulations for the licensure of education and treatment facilities and programs for
 10 offenders receiving education or treatment under this section. The criteria developed
 11 by the Cabinet for Health and Family Services shall include:

- 12 (a) Manner of assessment;
- 13 (b) Appropriate education and treatment plans; and
- 14 (c) Referrals to other treatment providers.

15 (7) The participating facilities and programs shall be required to abide by these
 16 standards and shall report completion to the Transportation Cabinet. Upon request,
 17 the facility or program shall report to the courts regarding the progress of offenders
 18 being treated pursuant to this section.

19 (8) Administrative decisions regarding the licensure of education and treatment
 20 facilities and programs may be appealed, and upon appeal an administrative hearing
 21 shall be conducted in accordance with KRS Chapter 13B.

22 ➔Section 19. KRS 189A.050 is amended to read as follows:

23 (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e)
 24 shall be sentenced to pay a service fee of three hundred seventy-five dollars (\$375),
 25 which shall be in addition to all other penalties authorized by law.

26 (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS
 27 534.020 relating to the method of imposition and KRS 534.060 as to remedies for

1 nonpayment of the fee.

2 (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid
3 into the general fund, and the remainder of the revenue collected from the service
4 fee imposed by this section shall be utilized as follows:

5 (a) Twelve percent (12%) of the amount collected shall be transferred to the
6 Department of Kentucky State Police forensic laboratory for the acquisition,
7 maintenance, testing, and calibration of alcohol concentration testing
8 instruments and the training of laboratory personnel to perform these tasks;

9 (b) Twenty percent (20%) of the service fee collected pursuant to this section
10 shall be allocated to the Department for Public Advocacy;

11 (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for
12 training of prosecutors for the prosecution of persons charged with violations
13 of this chapter and for obtaining expert witnesses in cases involving the
14 prosecution of persons charged with violations of this chapter or any other
15 offense in which driving under the influence is a factor in the commission of
16 the offense charged;

17 (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
18 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust
19 fund established under KRS 211.476; and
20 2. Fifty percent (50%) shall be credited to the Cabinet for Health and
21 Family Services, Department for Mental Health and Mental Retardation
22 Services, for the purposes of providing direct services to individuals
23 with brain injuries that may include long-term supportive services and
24 training and consultation to professionals working with individuals with
25 brain injuries. As funding becomes available under this subparagraph,
26 the cabinet may promulgate administrative regulations pursuant to KRS
27 Chapter 13A to implement the services permitted by this subparagraph;

- 1 (e) Any amount specified by a specific statute shall be transferred as provided in
- 2 that statute;
- 3 (f) Forty-six percent (46%) of the amount collected shall be transferred to be
- 4 utilized to fund enforcement of this chapter and for the support of jails,
- 5 recordkeeping, treatment, and educational programs authorized by this chapter
- 6 and by the Department for Public Advocacy; and
- 7 (g) The remainder of the amount collected shall be transferred to the general fund.
- 8 (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be
- 9 placed in trust and agency accounts that shall not lapse.

10 ➔Section 20. KRS 189A.070 is amended to read as follows:

- 11 (1) Unless the person is under eighteen (18) years of age, in addition to the penalties
- 12 specified in KRS 189A.010, a person convicted of violation of KRS
- 13 189A.010(1)(a), (b), (c),~~[(d)]~~ (d), or (e) shall have his license to operate a motor
- 14 vehicle or motorcycle revoked by the court as follows:
- 15 (a) For the first offense within a five (5) year period, for a period of not less than
- 16 thirty (30) days nor more than one hundred twenty (120) days;
- 17 (b) For the second offense within a five (5) year period, for a period of not less
- 18 than twelve (12) months nor more than eighteen (18) months;
- 19 (c) For a third offense within a five (5) year period, for a period of not less than
- 20 twenty-four (24) months nor more than thirty-six (36) months; and
- 21 (d) For a fourth or subsequent offense within a five (5) year period, sixty (60)
- 22 months.
- 23 (e) For purposes of this section, "offense" shall have the same meaning as
- 24 described in KRS 189A.010(5)(e).
- 25 (2) In determining the five (5) year period under this section, the period shall be
- 26 measured from the dates on which the offenses occurred for which the judgments of
- 27 conviction were entered.

- 1 (3) In addition to the period of license revocation set forth in subsection (1) or (7) of
 2 this section, no person shall be eligible for reinstatement of his privilege to operate
 3 a motor vehicle until he has completed the alcohol or substance abuse education or
 4 treatment program ordered pursuant to KRS 189A.040.
- 5 (4) A person under the age of eighteen (18) who is convicted of violation of KRS
 6 189A.010(1)(a), (b), (c), ~~(d)~~, or (e) shall have his license revoked by the court
 7 until he reaches the age of eighteen (18) or shall have his license revoked as
 8 provided in subsection (1) or (7) of this section, whichever penalty will result in the
 9 longer period of revocation or court-ordered driving conditions.
- 10 (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court
 11 upon conviction. The court shall transmit the conviction records, and other
 12 appropriate information to the Transportation Cabinet. A court shall not waive or
 13 stay this procedure.
- 14 (6) Should a person convicted under this chapter whose license is revoked fail to
 15 surrender it to the court upon conviction, the court shall issue an order directing the
 16 sheriff or any other peace officer to seize the license forthwith and deliver it to the
 17 court.
- 18 (7) A person whose license has been revoked pursuant to subsection (1)(b), (c), or (d)
 19 of this section may move the court to reduce the applicable minimum period of
 20 revocation by one-half (1/2), but in no case less than twelve (12) months. The court
 21 may, upon a written finding in the record for good cause shown, order such a period
 22 to be reduced by one-half (1/2), but in no case less than twelve (12) months, if the
 23 following conditions are satisfied:
- 24 (a) The person shall not operate a motor vehicle or motorcycle without an ignition
 25 interlock device as provided for in KRS 189A.340(2);
- 26 (b) The person shall not operate a motor vehicle or motorcycle at any other time
 27 and for any other purposes than those specified by the court; and

1 (c) The ignition interlock device shall be installed on the motor vehicle or
 2 motorcycle for a period of time not less than the applicable minimum period
 3 of revocation provided for under subsection (1)(b), (c), or (d) of this section
 4 nor for more than the respective maximum period of revocation provided for
 5 under subsection (1)(b), (c), or (d) of this section.

6 (8) Upon a finding of a violation of any of the conditions specified in subsection (7) of
 7 this section or of the order permitting any reduction in a minimum period of
 8 revocation that is issued pursuant thereto, the court shall dissolve such an order and
 9 the person shall receive no credit toward the minimum period of revocation required
 10 under subsection (1)(b), (c), or (d) of this section.

11 ➔Section 21. KRS 189A.085 is amended to read as follows:

12 (1) Unless the court orders installation of an ignition interlock device under KRS
 13 189A.340, upon the conviction of a second or subsequent offense of KRS
 14 189A.010, a person shall have the license plate or plates on all of the motor vehicles
 15 owned by him or her, either solely or jointly, impounded by the court of competent
 16 jurisdiction in accordance with the following procedures:

17 (a) At the final sentencing hearing, the person who has been convicted of a
 18 second or subsequent offense of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e)
 19 shall physically surrender any and all license plate or plates currently in force
 20 on any motor vehicle owned either individually or jointly by him or her to the
 21 court. The order of the court suspending the license plate or plates shall not
 22 exceed the time for the suspension of the motor vehicle operator's license of
 23 the second or subsequent offender as specified in KRS 189A.070.

24 (b) The clerk of the court shall retain any surrendered plate or plates and transmit
 25 all surrendered plate or plates to the Transportation Cabinet in the manner set
 26 forth by the Transportation Cabinet in administrative regulations promulgated
 27 by the Transportation Cabinet.

1 (2) Upon application, the court may grant hardship exceptions to family members or
 2 other individuals affected by the surrender of any license plate or plates of any
 3 vehicle owned by the second or subsequent offender. Hardship exceptions may be
 4 granted by the court to the second or subsequent offender's family members or other
 5 affected individuals only if the family members or other affected individuals prove
 6 to the court's satisfaction that their inability to utilize the surrendered vehicles
 7 would pose an undue hardship upon the family members or affected other
 8 individuals. Upon the court's granting of hardship exceptions, the clerk or the
 9 Transportation Cabinet as appropriate, shall return to the family members or other
 10 affected individuals the license plate or plates of the vehicles of the second or
 11 subsequent offender for their utilization. The second or subsequent offender shall
 12 not be permitted to operate a vehicle for which the license plate has been suspended
 13 or for which a hardship exception has been granted under any circumstances.

14 (3) If the license plate of a jointly owned vehicle is impounded, this vehicle may be
 15 transferred to a joint owner of the vehicle who was not the violator.

16 (4) If the license plate of a motor vehicle is impounded, the vehicle may be transferred.

17 ➔Section 22. KRS 189A.090 is amended to read as follows:

18 (1) No person shall operate or be in physical control of a motor vehicle while his
 19 license is revoked or suspended under KRS 189A.010(6), 189A.070, 189A.107,
 20 189A.200, or 189A.220, or operate or be in physical control of a motor vehicle
 21 without a functioning ignition interlock device in violation of KRS 189A.345(1).

22 (2) In addition to any other penalty imposed by the court, any person who violates
 23 subsection (1) of this section shall:

24 (a) For a first offense within a five (5) year period, be guilty of a Class B
 25 misdemeanor and have his license revoked by the court for six (6) months,
 26 unless at the time of the offense the person was also operating or in physical
 27 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~

- 1 (d), or (e), in which event he shall be guilty of a Class A misdemeanor and
 2 have his license revoked by the court for a period of one (1) year;
- 3 (b) For a second offense within a five (5) year period, be guilty of a Class A
 4 misdemeanor and have his license revoked by the court for one (1) year,
 5 unless at the time of the offense the person was also operating or in physical
 6 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c),~~[-or]~~
 7 (d), or (e), in which event he shall be guilty of a Class D felony and have his
 8 license revoked by the court for a period of two (2) years;
- 9 (c) For a third or subsequent offense within a five (5) year period, be guilty of a
 10 Class D felony and have his license revoked by the court for two (2) years,
 11 unless at the time of the offense the person was also operating or in physical
 12 control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c),~~[-or]~~
 13 (d), or (e), in which event he shall be guilty of a Class D felony and have his
 14 license revoked by the court for a period of five (5) years.
- 15 (3) The five (5) year period under this section shall be measured in the same manner as
 16 in KRS 189A.070.
- 17 (4) After one (1) year of the period of revocation provided for in subsection (2)(b) or
 18 (c) of this section has elapsed, a person whose license has been revoked pursuant to
 19 either of those subsections may move the court to have an ignition interlock device
 20 installed for the remaining portion of the period of revocation. The court may, upon
 21 a written finding in the record for good cause shown, order an ignition interlock
 22 device installed if the following conditions are satisfied:
- 23 (a) The person shall not operate a motor vehicle or motorcycle without an ignition
 24 interlock device as provided for in KRS 189A.340(2);
- 25 (b) The person shall not operate a motor vehicle or motorcycle at any other time
 26 and for any other purposes than those specified by the court; and
- 27 (c) The ignition interlock device shall be installed on the motor vehicle or

motorcycle for a period of time not less than the period of revocation required for the person under subsection (2)(b) or (c) of this section.

- (5) Upon a finding of a violation of any of the conditions specified in subsection (4) of this section or of the order permitting the installation of an ignition interlock device in lieu of the remaining period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2)(b) or (c) of this section.

➔Section 23. KRS 189A.105 is amended to read as follows:

- (1) A person's refusal to submit to tests under KRS 189A.103 shall result in revocation of his driving privilege as provided in this chapter.

- (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:

1. That, if the person refuses to submit to such tests, the fact of this refusal may be used against him in court as evidence of violating KRS 189A.010 and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating KRS 189A.010(1) then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests he will be unable to obtain a hardship license; and
2. That, if a test is taken, the results of the test may be used against him in court as evidence of violating KRS 189A.010(1), and that if the results of the test are 0.15~~[0.18]~~ or above and the person is subsequently convicted of violating KRS 189A.010(1), then he will be subject to a sentence that is twice as long as the mandatory minimum jail sentence

1 imposed if the results are less than 0.15~~[0.18]~~; and

2 3. That if the person first submits to the requested alcohol and substance
3 tests, the person has the right to have a test or tests of his blood
4 performed by a person of his choosing described in KRS 189A.103
5 within a reasonable time of his arrest at the expense of the person
6 arrested.

7 (b) Nothing in this subsection shall be construed to prohibit a judge of a court of
8 competent jurisdiction from issuing a search warrant or other court order
9 requiring a blood or urine test, or a combination thereof, of a defendant
10 charged with a violation of KRS 189A.010, or other statutory violation arising
11 from the incident, when a person is killed or suffers physical injury, as defined
12 in KRS 500.080, as a result of the incident in which the defendant has been
13 charged. However, if the incident involves a motor vehicle accident in which
14 there was a fatality, the investigating peace officer shall seek such a search
15 warrant for blood, breath, or urine testing unless the testing has already been
16 done by consent. If testing done pursuant to a warrant reveals the presence of
17 alcohol or any other substance that impaired the driving ability of a person
18 who is charged with and convicted of an offense arising from the accident, the
19 sentencing court shall require, in addition to any other sentencing provision,
20 that the defendant make restitution to the state for the cost of the testing.

21 (3) During the period immediately preceding the administration of any test, the person
22 shall be afforded an opportunity of at least ten (10) minutes but not more than
23 fifteen (15) minutes to attempt to contact and communicate with an attorney and
24 shall be informed of this right. Inability to communicate with an attorney during this
25 period shall not be deemed to relieve the person of his obligation to submit to the
26 tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain
27 applicable to the person upon refusal. Nothing in this section shall be deemed to

1 create a right to have an attorney present during the administration of the tests, but
 2 the person's attorney may be present if the attorney can physically appear at the
 3 location where the test is to be administered within the time period established in
 4 this section.

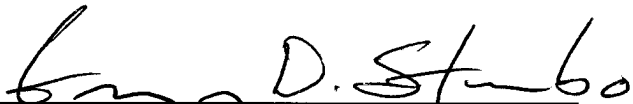
5 (4) Immediately following the administration of the final test requested by the officer,
 6 the person shall again be informed of his right to have a test or tests of his blood
 7 performed by a person of his choosing described in KRS 189A.103 within a
 8 reasonable time of his arrest at the expense of the person arrested. He shall then be
 9 asked "Do you want such a test?" The officer shall make reasonable efforts to
 10 provide transportation to the tests.

11 ➔Section 24. KRS 189A.240 is amended to read as follows:

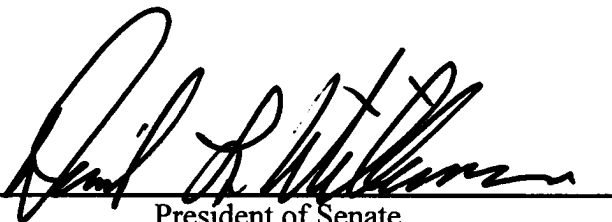
12 In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the
 13 court determines by a preponderance of the evidence that:

- 14 (1) The person was charged and arrested by a peace officer with a violation of KRS
 15 189A.010(1)(a), (b), (c), ~~(d)~~, or (e);
- 16 (2) The peace officer had reasonable grounds to believe that the person was operating a
 17 motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, or (e);
- 18 (3) There is probable cause to believe that the person committed the violation of KRS
 19 189A.010(1)(a), (b), (c), ~~(d)~~, or (e) as charged; and
- 20 (4) The person has been convicted of one (1) or more prior offenses as described in
 21 KRS 189A.010(5)(e) or has had his motor vehicle operator's license suspended or
 22 revoked on one (1) or more occasions for refusing to take an alcohol concentration
 23 or substance test, in the five (5) year period immediately preceding his arrest, then
 24 the court shall continue to suspend the person's operator's license or privilege to
 25 operate a motor vehicle. The provisions of this section shall not be construed as
 26 limiting the person's ability to challenge any prior convictions or license
 27 suspensions or refusals.

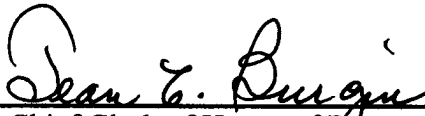
1 ➔Section 25. Whereas synthetic cannabinoid agonists and piperazines are
2 dangerous substances that are currently legal to sell and possess in this state, and whereas
3 it is necessary to prohibit the sale or possession of these substances immediately in an
4 effort to prevent stockpiling of them by individuals for future use, an emergency is
5 declared to exist, and Sections 1 to 16 of this Act take effect upon its passage and
6 approval by the Governor or upon its otherwise becoming law.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 
